TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1904.

No. [redacted] 51.

FRED RASSMUSSEN, PLAINTIFF IN ERROR,

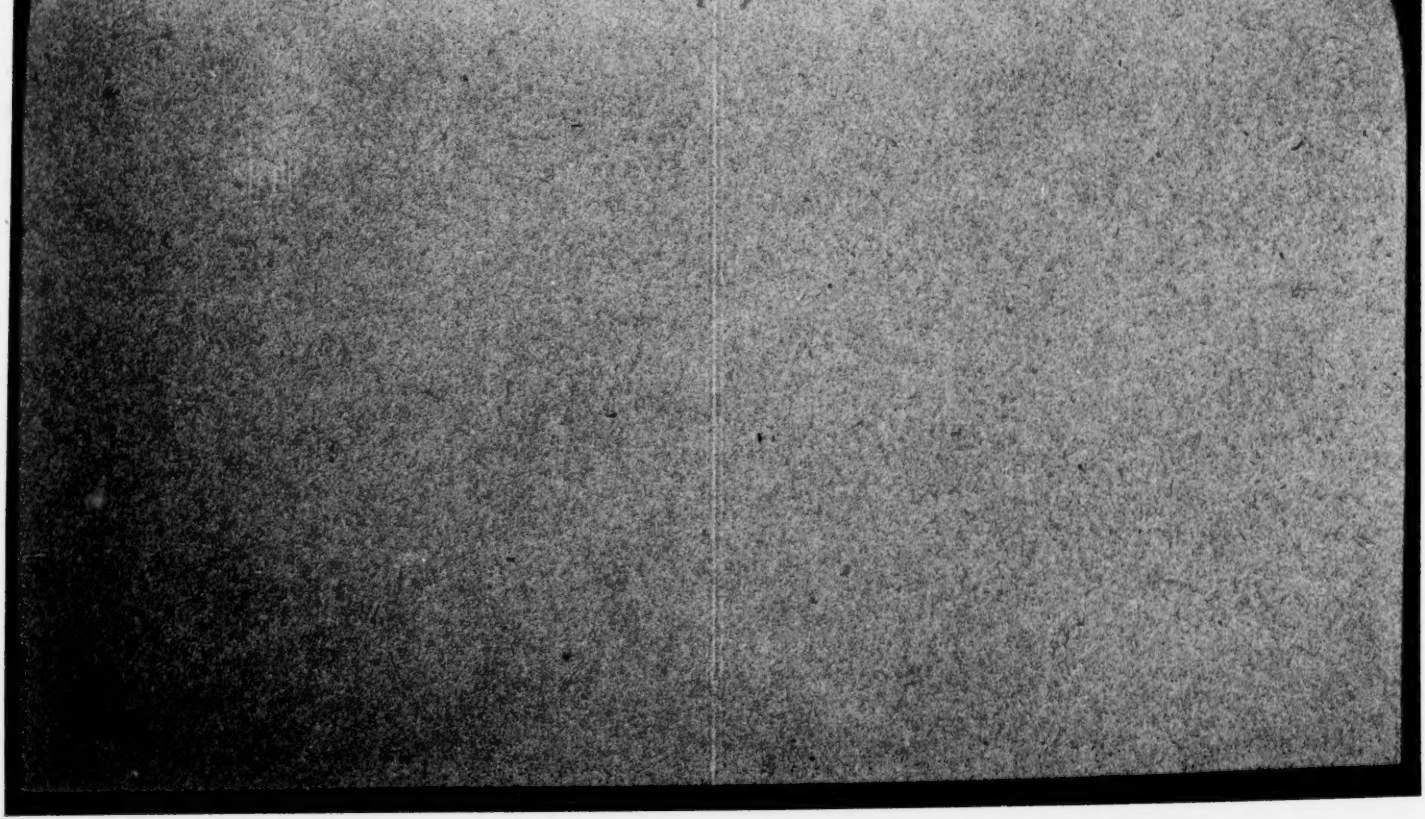
vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ALASKA.

FILED JUNE 6, 1903.

(18,965.)



(18,965.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 314.

FRED RASSMUSSEN, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ALASKA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 18, 1903.

1 In the United States District Court for the District of Alaska, Division No. 1.

THE UNITED STATES OF AMERICA
vs.
FRED RASMUSSEN. } Sec. 127, A. C. C.

At a regular term of the United States district court for the district of Alaska, division No. 1, in the year of our Lord one thousand nine hundred and two, begun and held at Skagway in said district, beginning October 6th, 1902.

The grand jurors of the United States of America, selected, empaneled, sworn and charged within and for the district of Alaska, division No. 1, accuse Fred Rasmussen by this indictment of the crime of keeping a house of ill fame for the purpose of prostitution, fornication, and lewdness, committed as follows:—

The said Fred Rasmussen at or neay Juneau, within the district of Alaska, division No. 1, and within the jurisdiction of this court, on the 4th day of October, in the year or our Lord one thousand nine hundred and two, and on divers other days and at divers other times before and since said day, did keep and maintain a certain house of ill fame for the purpose of prostitution, fornication and lewdness, then and there resorted to for the purpose of prostitution, fornication, and lewdness; and so the grand jurors selected, empaneled, sworn and charged as aforesaid, upon their oaths do say, that Fred Rasmussen did then and there commit the crime of keeping a house of iil fame for the purpose of prostitution, fornication, and lewdness in the manner and form afo-esaid, contrary to the statute in such cases made and provided, and against the peace and dignity of the United States of America.

ROB'T A. FRIEDRICH,
United States District Attorney.

2 [Endorsed:] No. 336 "B." United States of America *vs.* Fred Rasmussen. Indictment for keeping a house of ill fame for the purpose of prostitution fornication and lewdness. A true bill. J. D. Carroll, foreman of grand jury. Witnesses examined before the grand jury L. R. Gillette, W. J. Hills. Filed Oct. 15, 1902. W. J. Hills, clerk. Robert A. Friedrich U. S. district attorney.

3 In the United States District Court for the District of Alaska, Division No. 1.

UNITED STATES
vs.
FRED RASMUSSEN. } No. 336 B. Appearance and Plea.

And now on this day came the U. S. attorney, came also the defendant by his counsel W. E. Crews, and after the reading of the

indictment herein a copy being served in open court, and being asked by the court if he is indicted by his true name and answering that he is; and being asked by the court if he is guilty or not guilty, answers that he is not guilty and therefore puts himself upon the country and the United States attorney for and on behalf of the Government doth the same, and this cause is set down for trial on December 10th, 1902.

M. C. BROWN, *Judge.*

Done in open court this 3d day of December, 1902.

4 THE UNITED STATES OF AMERICA, *District of Alaska.*

In the District Court of the United States for the District of Alaska.

THE UNITED STATES OF AMERICA *vs.* FRED RASMUSSEN. } Verdict. December Term, 1902.

We, the jury empaneled and sworn in the above entitled cause, find the defendant Fred Rasmussen guilty as charged in the indictment herein.

A. M. ROSS, *Foreman.*

Endorsed: No. 336-B. United States of America *vs.* Fred Rasmussen. Indictment for keeping a house of ill fame. Verdict. Filed Dec. 12-1902. W. J. Hills, clerk.

5 In the United States District Court for the District of Alaska, Div. No. 1.

UNITED STATES *vs.* FRED RASMUSSEN. } No. 336 B. Order.

Now on this day this cause came on to be heard upon the motion of defendant for a new trial herein, and after argument by the counsel for the defendant and by the United States attorney, the court being fully advised in the premises denies said motion, to which order and ruling of the court defendant by counsel excepts.

Done in open court this 29th day of December, 1902.

M. C. BROWN, *Judge.*

6 In the United States District Court for the District of Alaska, Div. No. 1.

UNITED STATES *vs.* FRED RASMUSSEN. } No. 336 B. Judgment.

And now on this day came the U. S. attorney Thomas R. Lyons, Esq., came also the defendant in person, came likewise the defendant's attorney W. E. Crews, Esq.; and the defendant having on a former day of this court been by a jury convicted of the crime of keeping a house of ill fame and having been given notice of time of sentence, and now being asked by the court if he has anything to say why the judgment of the court should not now be pronounced against him, and giving no valid or sufficient excuse in that behalf; it is therefore the judgment and sentence of the court that you Fred Rasmussen be taken by the U. S. marshal for division No. 1 of the district of Alaska to the common jail at Sitka, Alaska and that you be there imprisoned in said jail for the term of one year, and that you pay all costs incurred in the prosecution of this cause, and that you stand committed until this sentence is carried into effect.

Done in open court this 26th day of January, 1903.

M. C. BROWN, *Judge.*

7 UNITED STATES OF AMERICA, *First Division, District of Alaska,* } *ss:*

I hereby certify that the within order came into my hands on Feb. 4, 1903, and that I executed the same by apprehending the within named def't Fred Rasmussen at Juneau, Alaska, on said 4" day of Feb. 1903; that I subsequently released said def't on said 4" day of Feb. 1903, upon his depositing the sum of $1500.00 cash in my hands for his appearance until an appeal bond was filed and approved by the court; that afterwards, on Feb. 20, 1903, an order was duly made and entered by the court allowing a writ of error and approving the appeal bond and directing that all proceedings on execution of judgment herein be stayed and suspended pending the determination of said writ of error, and, accordingly, I refunded the cash bail so deposited with me as above set forth, and hereby return this order.

Dated Juneau, Alaska, Feb. 24, 1903.

JAMES M. SHOUP,
U. S. Marshal,
By JOHN B. HEYBURN,
Office Deputy.

Endorsed: 336 B. United States *vs.* Fred Rasmussen. Judgment. Filed Feb. 24, 1903. W. J. Hills, clerk.

8 In the United States District Court for the District of Alaska, Division No. 1, at Juneau.

UNITED STATES
v.
FRED RASSMUSSEN. } No. 336 B. Petition for Writ of Error.

To the Honorable Melville C. Brown, judge of the above entitled court:

The defendant in the above entitled cause, feeling himself aggrieved by the verdict of the jury returned herein on the 12 day of Decembe", 1902, and the judgment and sentence thereon rendered on the 26th day of January, 1903, whereby he was adjudged guilty of the crime charged in the indictment herein and sentenced to serve a term of one year in the common jail at Sitka, comes now and petitions this honorable court for an order allowing defendant to prosecute a writ of error to the Supreme Court of the United States under and according to the laws in such cases made and provided; and also that an order be made staying proceedings and execution in said cause until the further order of the Supreme Court of the United States and pending the prosecution of his said writ of error; and your petitioner will ever pray, etc.

FRED RASSMUSSEN.
W. E. CREWS,
Attorney for Defendant.

9 [Endorsed:] No. 336-B. In the United States district court, for the district of Alaska, division No. 1. United States *vs.* Fred Rassmussen Copy Petition for writ Filed Apr. 4, 1903 W. J. Hills, clerk by W. S. Coutant, deputy W. E. Crews, attorney for —— ——, Juneau, Alaska.

10 In the United States District Court for the District of Alaska, Division No. 1, at Juneau.

UNITED STATES
v.
FRED RASSMUSSEN. } No. 336 B.

Know all men by these presents that defendant Fred Rassmussen as principal, and B. M. Behrends, —— —— and —— —— as sureties, *is* held and firmly bound unto the United States of America in the sum of fifteen hundred ($1500) dollars, to be paid to said United States of America; for the payment of which, well and truly to be made, we bind ourselves, our heirs and executors firmly by these presents.

Sealed with our seals and dated this 3d day of March, 1903.

The conditions of the above bond are such, that whereas the above named Fred Rassmussen has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled cause by the United States district court for the district of Alaska, division No. 1, wherein the said Rassmussen was adjudged guilty of the crime of keeping and maintaining a bawdy-house for the purpose of fornication and prostitution:

Now, therefore, if the said Rassmussen shall prosecute said writ to affect, and pay all the costs if he shall fail to make good said writ, and shall at all times render himself amenable to the orders and processes of the Supreme Court of the United States, as well as the orders and processes of the United States district court for the
11 district *court for the district* of Alaska, division No. 1, and if said cause be affirmed by the said Supreme Court of the United States, shall render himself in execution of the judgment and abide all orders of the court, this obligation shall be void, otherwise remaining in full force and affect.

B. M. BEHRENDS.
—— ——.
—— ——.

Signed, delivered and taken and acknowledged this — day of March, 1903, before me,

WALTER S. COUTANT,
[SEAL.] *Deputy Clerk of the United States District Court for the District of Alaska, Division No. 1.*

Approved this 3rd day of March, A. D. 1903.
MELVILLE C. BROWN, *Judge.*

12 [Endorsed:] No. 336–B. In the United States district court, for the district of Alaska, division No. 1. United States *vs.* Fred. Rassmussen Bond on writ Filed Apr. 4, 1903 W. J. Hills, clerk by W. S. Coutant, deputy W. E. Crews, attorney for —— ——, Juneau, Alaska.

13 In the United States District Court for the District of Alaska, Division No. 1, at Juneau.

UNITED STATES
v.
FRED RASSMUSSEN. } No. 336 B.

Comes now the defendant in the above entitled cause by his attorney, and assigns the following errors as committed by the court in the above entitled and numbered cause, to wit:

1.

The court erred in compelling appellant, over his protest and objection, to be tried with a jury of six men instead of by a jury of twelve men.

2.

The court erred in instructing the jury as follows: That one may commit this offense without being himself present, or even knowing of anyone particular act of this sort occurring in his house, if he knew this sort of thing was going on and knowingly permitted it, though he know of no positive single act, he is guilty of the offense here charged.

3.

The court erred in instructing the jury that before returning a verdict in this cause, that they must be certain beyond a reasonable doubt that the defendant at the time stated in the indictment was the keeper of the place indicated in the indictment. The person who aids in conducting a place of the character named in the indictment as manager, or other controlling character, is a keeper within the allegations of the indictment.

14 4.

The court erred in over-ruling and denying defendant's motion for a new trial.

2.

And for the said errors and other manifest errors of record herein, the defendant prays that said judgment and sentence be reversed and the defendant discharged; and for such other order as the court may deem proper.

FRED RASSMUSSEN,
Defendant.
W. E. CREWS,
Attorney for Defendant.

15 [Endorsed:] No. 336-B. In the United States district court for the district of Alaska, division No. 1. United States *vs.* Fred Rassmussen. Assignment of errors. Filed Apr. 4, 1903 W. J. Hills, clerk, by W. S. Coutant, deputy W. E. Crews, attorney for —— ——, Juneau, Alaska.

16 In the United States District Court for the District of Alaska, Division No. 1.

UNITED STATES
v.
FRED RASSMUSSEN. } No. 336-B.

Now, on this 3d day of April, 1903, within the time allowed by the court, the defendant presents this his bill of exceptions and prays that the same be allowed, signed, sealed and made a part of the record herein; which is accordingly done in chambers, this 3d day of March, 1903.

Bill of Exceptions

Be it remembered that on this 9th day of December, 1902, the above entitled and numbered cause came on regularly for hearing in the above entitled court, the United States appearing by Robert A. Friedrich United States district attorney; and the defendant appearing in person, as well as by W. E. Crews, his attorney. Both parties having announced themselves ready for trial; the following proceedings were had to-wi-

The court then and there announced to the counsel, that the cause would be tried before a jury composed of six jurors, in accordance with the act of Congress as declared by section 171, Carter's Annotated Alaska Code. Counsel then and there objected to a trial by six jurors and demanded a trial by twelve jurors, which objection was by the court overruled. The counsel for the defendant then and there excepted the rulings of the court, which exception was allowed.

Thereupon, the court proceeded to the impaneling of the jury, and after six jurors had been drawn, impaneled and qualified to try the cause, directed that the trial proceed before said jury as impaneled.

Whereupon, the counsel for the defendant renewed his objec-
17 tion to the trial by six jurors, and again demanded that twelve jurors be impaneled to try the cause, which objection was by the court overruled, to which rulings the counsel for the defendant duly excepted, which exception was by the court allowed.

After the case had been closed by both parties, the court thereupon, among other instruction given to the jury, instructed them, as follows:

"I instruct you that a person who knowingly suffers mere lodgers or other inmates of his house to use it as a brothel, keeps in law, however the outward fact may appear, a bawdy-house. One may commit this offense without being themselves present at all or knowing any particular act of this sort occurring in his house. If he knew of this sort of thing going on and knowingly permit it, though he know of positive single act, he is guilty of the offense here charged."

To which instruction of the court, counsel for the defendant duly excepted; and the exception was by the court allowed.

The court further instructed the jury, among other things, that before a jury can return a verdict of "guilty," the jury must be satisfied by the evidence in this case, beyond a reasonable doubt, that the defendant, at the time stated in the indictment, was the keeper of the place indicated in the indictment. A person who aids in conducting a place of the character stated in the indictment as manager or other controlling character, is a keeper within the allegations of the indictment. To the latter of said instructions, counsel for defendant duly excepted, and his exception was duly allowed by the court.

And the jury having returned a verdict on the — January, 1903, finding the defendant guilty as charged in the indictment, the defendant thereafter, and within the time allowed by law,
18 filed his motion for a new trial; which said motion was as follows:

In the United States District Court for the District of Alaska, Division No. 1, at Juneau.

UNITED STATES
v.
FRED RASMUSSEN. } Motion for New Trial.

Comes now the above named defendant and moves the court to set aside the verdict of "guilty" in the above entitled cause and grant the defendant a new trial therein for the following reasons:

1.

Irregularities in the proceedings of the court by which the defendant was prevented from having a fair trial; and for requiring defendant to go to trial before a jury consisting of six instead of twelve men.

2.

Errors in law occurring at the trial and excepted to by the defendant.

3.

Errors of the court in giving the jury said instructions and refusing to give certain instructions requested by the defendant; all of which was at the time excepted to by the defendant.

W. E. CREWS,
Attorney for Defendant.

Thereafter, on the 29th day of Dec., 1902, said motion came on to be heard, the defendant appearing in court in person as well as by counsel, the Government appearing by the United States attorney, and was duly argued and submitted. The court thereupon overruled the same; to which ruling the counsel for defendant duly excepted. The exception was allowed.

Thereafter, on the 26 day of January, 1903, said defendant was brought into court and the court proceeded to pronounce judgement; that the defendant be confined in the common jail at Sitka for a period of one year.

Now, on this 3d day of April, 1903, within the time allowed by law, the defendant presented this, his bill of exceptions,
19 and prays that the same may be allowed, signed and sealed and made a part of the record herein; which is accordingly done in open court, this 3rd day of March, 1903.

MELVILLE C. BROWN,
Judge of the United States District Court in and for the District of Alaska, Division No. 1.

20 [Endorsed:] No. 336–B. In the United States district court, for the district of Alaska, division No. 1. United States *vs.* Fred. Rassmussen Copy Bill of exceptions Filed Apr. 4–1903 W. J. Hills, clerk by W. S. Coutant, deputy W. E. Crews, attorney for —— ——, Juneau, Alaska.

21 In the United States District Court for the District of Alaska, Division No. 1, at Juneau.

UNITED STATES
v.
FRED RASSMUSSEN. } No. 336–B. Order Allowing Writ of Error.

Upon motion of W. E. Crews, attorney for defendant, and upon his filing a petition for writ of error and assignment of errors, together with a bill of exceptions, it is hereby ordered that a writ of error be, and the same is, hereby allowed to have the judgment in this court reviewed by the Supreme Court of the United States; and the defendant having filed in this court a bond in the sum of $1,500.00, which bond has been by this court approved, it is further ordered that all proceedings on execution herein be stayed and suspended pending the determination of the said writ of error in said Supreme Court of the United States.

Dated this 3rd day of April 1903.

MELVILLE C. BROWN,
Judge of the United States District Court
in and for the District of Alaska.

22 [Endorsed:] No. 336–B In the United States district court, for the district of Alaska, division No. 1. United States *vs.* Fred Rassmussen Order allowing writ Filed Apr. 4, 1903 W. J. Hills, clerk by W. S. Coutant, deputy W. E. Crews, attorney for —— ——, Juneau, Alaska.

23 In the United States District Court for the District of Alaska, Division No. 1, at Juneau.

UNITED STATES
v.
FRED RASSMUSSEN. } No. 336–B.

The President of the United States of America to the Honorable M. C. Brown, judge of the United States district court in and for the district of Alaska, division No. 1, Greeting:

Because in the proceedings, as also in the rendition of the judgment of a plea, in the said district court, before you, between the United States of America and Fred Rassmussen, manifest error has happened to the great prejudice of the defendant, Rassmussen, as is stated and appears in the petition herein.

We, being willing that error, if any hath happened, should be duly corrected, and full and speedy justice be done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so as to have the same at said place before said court on the 2d day of June, 1903; that the record and proceedings aforesaid being inspected, said court of appeals may cause further to be done therein to correct those errors what of right and according to law and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 3d day of April, 1903.

24 Attest my hand and seal of the United States district court in and for the district of Alaska, at the clerk's office at Juneau, Alaska, on the day and year above written.

(COURT SEAL.)

W. J. HILLS,
By W. S. COUTANT,
Deputy Clerk of the United States District Court in and for the District of Alaska, Division No. 1.

Allowed this 3d day of April, 1903.

MELVILLE C. BROWN,
Judge of the United States District Court in and for the District of Alaska.

25 [Endorsed:] No. 336–B. In the United States district court, for the district of Alaska, division No. 1. United States *vs.* Fred Rassmussen Writ of error Filed Apr. 4, 1903 W. J. Hills, clerk, by W. S. Coutant, deputy W. E. Crews, attorney for —— ——, Juneau, Alaska.

26 UNITED STATES OF AMERICA, }
District of Alaska, Division No. 1, } *ss:*

I, W. J. Hills, clerk of the United States district court for the district of Alaska, division No. 1, do hereby certify that the above and foregoing and hereto annexed 25 pages are a full, true and correct transcript of the records and files in the therein mentioned cause of the United States *vs.* Fred Rasmussen, as the same appears of record and on file in my office; and that the same is in accordance with the command of the writ of error in said cause allowed.

That this transcript has been prepared by the plaintiff in error out of court by order of the court, and the costs of examination and certificate, amounting to $2.50, have been paid to me by plaintiff in error.

In witness whereof I have hereunto set my hand and affixed the seal of the court this 20th day of April, A. D. 1903.

[Seal United States District Court, Alaska.]

W. J. HILLS,
Clerk U. S. District Court for Division No. 1, Alaska.

27 In the United States District Court for the District of Alaska, Division No. 1, at Juneau.

UNITED STATES
v.
FRED RASSMUSSEN. } No. 336–B.

The President of the United States of America to the Honorable M. C. Brown, judge of the United States district court in and for the district of Alaska, division No. 1, Greeting:

Because in the proceedings, as also in the rendition of the judgment of a plea, in the said district court, before you, between the United States of America and Fred Rassmussen, manifest error has happened to the great prejudice of the defendant, Rassmussen, as is stated and appears in the petition herein.

We, being willing that error, if any hath happened, should be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so as to have the same at said place before said court on the 2d day of June 1903; that the record and proceedings aforesaid being inspected, said court of appeals may cause further to be done therein to correct those errors what of right and according to law and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 3d day of April, 1903.

28 Attest my hand and seal of the United States district court in and for the district of Alaska, at the clerk's office at Juneau, Alaska, on the day and year above written.

[Seal United States District Court, Alaska.]

W. J. HILLS,
By W. S. COUTANT,
Deputy Clerk of the United States District Court in and for the District of Alaska, Division No. 1.

Allowed this 3rd day of April, 1903.

MELVILLE C. BROWN,
Judge of the United States District Court in and for the District of Alaska.

29 [Endorsed:] No. 336–B. In the United States district court, for the district of Alaska, division No. 1. United States vs. Fred Rassmussen. Writ of error. Filed Apr 4 1903 W. J. Hills, clerk, by W. S. Coutant deputy W. E. Crews, attorney for —— ——, Juneau, Alaska.

30 In the United States District Court for the District of Alaska, Division No. 1, at Juneau.

UNITED STATES
vs.
FRED RASSMUSSEN. } Citation in Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the United States of America and the district attorney for the district of Alaska, division No. 1, Greeting:

You are hereby cited and admonished to be in the Supreme Court of the United States, at Washington, District of Columbia, within sixty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the United States district court for Alaska, division No. 1, at Juneau, wherein Fred Rassmussen is plaintiff in error and The United States are defendants in error, to show cause if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 3d day of April, A. D. 1903, and of the Independence of the United States the one hundred and twenty-seventh.

[Seal United States District Court, Alaska.]

MELVILLE C. BROWN,
District Judge for Alaska, Division No. 1.

Attest:
W. J. HILLS, *Clerk,*
By W. S. COUTANT, *Deputy.*

Service of the above and foregoing citation in error is hereby admitted to have been duly and legally made in the district of Alaska this 3rd day of April, 1903.

THOMAS R. LYONS,
U. S. District Attorney.

31 [Endorsed:] No. 336–B. In the United States district court, for the district of Alaska, division No. 1. United States *vs.* Fred. Rassmussen Citation Filed Apr. 8 1903 W. J. Hills, clerk, by W. S. Coutant, deputy W. E. Crews, attorney for ——, Juneau, Alaska.

Endorsed on cover: File No. 18965. Alaska D. C. U. S. Term No. 314. Fred Rassmussen, plaintiff in error, *vs.* The United States. Filed June 6, 1903.